

Internal Revenue Service

Appeals Office

Department of the Treasury**Employer Identification Number:**

Release Number: 201539032

Release Date: 9/25/2015

Date: June 29, 2015

Person to Contact:

Employee ID Number:

Tel:

Fax:

UIL: 0501.03-00**Certified Mail**

Dear:

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective XXXX.

Our revocation was made for the following reason(s):

You are not operated exclusively for exempt purposes as specified in section 501(c)(3) of the Code because you are not engaged primarily in activities which accomplish an exempt purpose. A substantial part of your activities serve the private interests of individuals. Private interests served include the payment of tuition for families and students and which is not based on any objective criteria.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write

to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892 and/or 556



Department of the Treasury
Internal Revenue Service
TE/GE: Exempt Organizations: Examinations

Date: August 2, 2013

Taxpayer Identification Number:

Form:
990/EZ

Tax year(s) ended:
April 30, 20XX - April 30, 20XX

Person to contact / ID number:

Contact numbers:
Phone Number:
Fax Number:
Manager's name / ID number:

Manager's contact number:
Phone Number:
Response due date:
September 3, 20XX

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service	May 16, 20XX
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended April 30, 20XX-20XX

ISSUE:

Whether the tax exempt status of a 501(c)(3) organization which has failed to demonstrate that it is operated exclusively for charitable purposes and which acts as a conduit for a foreign organization should be revoked.

ALTERNATIVE ISSUE:

Whether contributions to the tax exempt status of a 501(c)(3) organization which acts as a conduit for a foreign organization should be deductible under IRC 170 (c)(2.)

FACTS:

Organization and purpose:

ORG ("ORG" or "the EO") was organized as a non-profit corporation in the State of State on April 27, 20XX. The following individuals were named as initial directors:

Director-1
Director-2
President
Treasurer
Secretary

The address listed for all directors is Address, City, State Zip code. County County property records show that address as a residence owned by Individual-1 and Individual-2. The organization uses this address to the present day.

The articles list the organization's primary purpose as providing "financial support to ORG and other institutions, and to indigent individuals and families."

On November 10, 20XX, Treasurer, Treasurer, filed amended articles that expanded the purpose to "provide financial support to ORG, and needy individuals and families; to provide student, holiday and fellowship stipends; to support Jewish education; to fund Jewish outreach, events, weekends, and trips; and to fund room and board for students attending Jewish institutions."

In addition to providing support to Jewish Education, the EO makes contributions to the other schools in Country, including XXXX; XXXXX; and XXXXXX.

Form 1023 application and related correspondence:

ORG submitted Form 1023 Application for Recognition of Exemption Under Sec 501(c)(3) on September 30, 20XX. The following individuals were named as officers:

President, President
Treasurer, Treasurer
Secretary, Secretary

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	May 16, 20XX
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Activities listed in Part II of Form 1023 are "to support the operation of religious schools in the U.S. and abroad. These schools will involve themselves in the study of the Bible, Talmud and other religious subject matter in the Jewish tradition. The support will be to bona-fide institutions of Jewish education located in the U.S. and aboard (sic). The organization will not and (sic) issue direct aid or assistance to any individuals. The organization will not have any voice in these matters or visa (sic) versa."

Based on the ORG's Form 1023 application and several rounds of subsequent correspondence over a sixteen month period, the Internal Revenue Service stated in a letter January 25, 20XX, that "at this point your activities indicate that you are in effect operating as a conduit for a foreign organization. The foreign organization appears to be furthering charitable and educational purposes and you may be recognized as exempt under section 501(c)(3) but you will not have deductibility."

The reasons given for regarding the organization as a conduit were supported by an example from Rev. Rul. 63-252 were:

- The foreign organization caused the domestic organization to form,
- The organization's organizing document refers to supporting a specified foreign organization, and
- Publicity regarding donations represents that funds raised through the exempt organization for the supported organization will be deductible.

Specifically,

- ORG stated during correspondence that it was formed to further the purpose of ORG,
- ORG stated in its articles of incorporation that its primary focus is to provide financial support to ORG, and
- ORG stated on its web site that donations can be made deductible in the U.S. if made through ORG.

The organization disagreed with this assessment and provided additional statements and information in responses of February 27, 20XX and April 25, 20XX.

In a letter dated June 13, 20XX, based on the additional written testimony, the IRS determined that the organization was no longer considered a foreign conduit and allowed deductibility of donations.

The reasons given for no longer regarding the organization as a conduit were:

- The ORG's web site no longer directed donors to ORG,
- ORG described its grant program as independent of the ORG, and
- ORG described how funds it donated were under its full discretion and control.

ORG accepted this determination in a letter dated June 19, 20XX. The final determination letter was issued by the Internal Revenue Service on July 11, 20XX.

Form 886A	Department of the Treasury - Internal Revenue Service	May 16, 20XX
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended April 30, 20XX-20XX

Related individuals and organizations:

ORG ("the ORG"), located in City, Country, has been exempt under 501(c)(3) as a school since December 19XX. The organization's Form 990 return for the period ended December 31, 20XX return lists the following officers:

President, President (City, Country)
Treasurer, Vice-President (City, Country)

Its Form 990 for the period ending December 31, 20XX states its program service accomplishments as "provider of education." Note: The 20XX Form 990 is the last return filed by the ORG.

ORG is described by ORG in correspondence related to the Form 1023 application as "...a post high school institution of higher learning located in Country, which caters to English speaking male students between the ages of 17 to 22. The overwhelming majority of student come from the United States. The boys study subjects at intermediate and advanced level in Jewish law, Jewish history, bible, ethics, etc. In addition, there are recreational activities centering on Jewish life style and awareness of the Jewish life cycle and Jewish holidays. The goal of the school is to increase awareness of the role of Judaism in the life cycle of the students..."

The students "study abroad for a period of one to two years after completing high school in the U.S. Upon completion of their period of study in Country, the students return to colleges and universities in the U.S. The students of ORG can receive U.S. college credits for their studies abroad."

ORG has a web site address, www.xxxxx; however, its home page does not contain any hyperlinks. Several pages are available as stand-alone documents using an internet search. The latest update to any of the pages appears to be 20XX.

XXXXX, currently located in City, State has been exempt under 501(c)(3) since September 19XX. Its Form 990 returns list the following officers:
President-2, President (City, State, formerly of City, State)
Treasurer, Sec/Treasurer (City, State, formerly of City, State)

The organization's purpose is described as raising funds for ORG education. Note: Its articles were amended on December 16, 20XX to change its name to ORG. Its Form 990 return for the period ended April 30, 20XX shows the new name. Exempt organizations are required to notify the IRS of significant changes; however, the IRS database does not show receipt of updated information.

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Summary of overlapping board members of the three related organizations:	ORG	ORG	ORG
Treasurer	Treasurer and co-founder	Vice-President	Sec/Treasurer
President	President and co-founder	President	

Grants to organizations:

The following information was requested on Information Document Request #5 issued XX/14/XX, with answers received from the organization 2/10/XX in italics.

1. Provide a listing of the total number of grants made outside of the U.S.A to organizations. This listing should include the country or countries to which the grants have been made; the amount distributed for each grant; and the purpose of each grant.

Response:

Organization	Country	Amount - Year ended 4/30/XX	Amount - Year ended 4/30/XX	Purpose
<i>Torah Education-1</i>	<i>Country</i>	<i>\$0</i>	<i>\$0</i>	<i>Higher Education</i>
<i>Torah Education-2</i>	<i>Country</i>	<i>\$0</i>	<i>\$0</i>	<i>Higher Education</i>
<i>Torah Education-3</i>	<i>Country</i>	<i>\$0</i>		<i>Higher Education</i>
<i>Jewish Education</i>	<i>Country</i>	<i>\$0</i>	<i>\$0</i>	<i>Higher Education</i>

2. During the pre-grant process, how does your organization inquire about the foreign grant recipient's general financial status, its history and past activities, as well as its operational ability to accomplish the grant's purpose?

Response received 2/0/XX: During the pre-grant process, members of the organization visit the offices of the grant recipient.

3. If subsequent grants are made to foreign grant recipients, what type of follow-up does the EO conduct to determine whether or not the foreign grant recipient continues to have the operational ability to accomplish the grant's purpose?

Response received 2/0/XX: Periodic follow-up visits to the grant recipients' premises.

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Name of Taxpayer ORG		Year/Period Ended April 30, 20XX-20XX

4. Does your organization refer to the OFAC SDGT (Office of Foreign Asset Control Specially Designated Global Terrorist) list to determine if the foreign grant recipient is included on the list of possible terrorist activity organizations? If not, what process does your organization use?

Response received 2/0/XX: No.

5. During the grant application process, are the foreign grant recipients required to complete an application? If so, please make available all copies of such applications.

Response received 2/0/XX: No official documentation is requested.

6. Is the foreign grant recipient required to provide a detailed description of their project? If so, how is this information conveyed to your organization?

Response received 2/0/XX: N/A

7. Does your organization accept applications from individuals not connected with a particular organization? If so, please provide a listing of all individuals who have applied for a grant in the periods ending April 30, 20XX-20XX.

Response received 2/0/XX: No.

8. How are grant applications or requests reviewed and approved? Please provide detailed guidelines with respect to the entire review process, including the levels of review and approval within your organization.

Response received 2/0/XX: The board of directors reviews and approves the grants.

Note: Board meeting minutes, which would have documented the review and approval process, were requested as part of the examination but not provided.

9. Does the board of directors approve or disapprove the grants prior to notification to the foreign grant recipient? If so, are these actions documented in the minutes?

Response received 2/0/XX: See above.

10. Are grants ever approved in variance with the amount requested? If so, please provide examples.

Response received 2/0/XX: No.

11. Are grant recipients required to certify that funds will be used solely for charitable purposes? If so, how is this accomplished?

Response received 2/0/XX: The grants are given for educational purposes.

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12. Provide any agreements or documentation that set forth standards to enable measurement of the foreign grant recipient's progress toward grant goals.

Response received 2/0/XX: N/A

In a letter dated August 6, 20XX, the organization states, "As far as monitoring the use of funds, the ORG is a serious institution and there is no doubt all of the funds are used in the course of educating the students."

Note: Annual operating reports or financial reports for the ORG were requested as part of the examination but were not provided.

ORG states it provided \$X to ORG for the year ended April 30, 20XX, and \$X for the year ended April 30, 20XX.

ORG states that the ORG charges tuition of \$X per student ORG provided student lists showing the ORG had approximately X students for the 20XX-20XX school year and X students for the 20XX-20XX school year.

ORG's Form 990 for the year ended December 31, 20XX reports receiving \$X in contributions, and reports \$X in expenses. The year ended December 31, 20XX is the last year for which the ORG has filed a return.

Grants to individuals:

The following information was requested on Information Document Request #6 issued XX/14/XX, with responses received from the organization 2/10/XX in italics.

1. Provide a listing of the total number of grants made to individuals. This listing should include the names and tax identification numbers of grant recipients; the amount distributed for each grant; and the purpose of each grant. For educational grants, break out the amounts provided for tuition, school fees, books, travel, room & board, etc

Response received 2/0/XX: Listing of total number of grants made to individuals: see attached listing. All grants were made for educational purposes.

Note: Breakdown of costs was not provided as requested.

2. Describe the criteria used to select grant recipients, including the rules of eligibility.

Response received 2/0/XX: The recipients were selected on recommendation of their teachers.

3. Describe how and by whom the recipients were selected, including levels of review and approval and how selection is documented.

Response received 2/0/XX: The recipients were interviewed and then approved by the members of the board of directors.

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Note: Board meeting minutes, which would have documented the review and approval process, were requested as part of the examination but not provided.

4. Describe the process used to ensure the recipients used the grants for the intended purpose. If the grants were made directly to students, describe the process used to determine whether the students completed the education program for which the grants were provided.

Response received 2/0/XX: N/A

Note: Student attendance records, progress reports, and/or grade reports were requested as part of the examination but not provided.

5. Provide a copy of the grant/scholarship application form and any brochures or literature describing the grant/scholarship program.

Response received 2/0/XX: The students come by recommendation.

Note: On August 7, 20XX, copies of ORG's student application form were provided as part of the examination. The explanation provided states the following: The ORG charges \$X annually for attendance at the school. ORG provides scholarships for students based upon merit and upon need. They do not provide any monies directly to any of the boys attending the ORG. Instead, all scholarship money is transferred to the ORG itself.

Later in the same letter, it is stated that ORG pays fellowship stipends to senior students who demonstrate a willingness and aptitude for teaching Jewish studies. ORG also pays tutors on behalf of the parents in order to help them achieve more success in their studies.

6. Are grants ever approved in variance with the amount requested? If so, please provide examples.

Response received 2/0/XX: No.

7. Are any agreements in place that reflect your organization's discretion to withdraw approval if grant goals or charitable purposes are not met? If applicable, provide copies of such agreements.

Response received 2/0/XX: No.

Expenditure Control:

The following information was requested on Information Document Request #7 issued XX/14/XX, with answers received from the organization 2/10/XX in italics.

1. Does your organization receive periodic reports from foreign grant recipients to track the use of grant funds? If so, how often are the reports received and what information is required to be contained in the reports? If applicable, please have these reports available upon request.

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Response received 2/10/XX: No.

Note: Annual operating reports or financial reports for the ORG were requested as part of the examination but were not provided.

2. If reports and financial statements received from foreign grant recipients are not in English and/or dollars, are the reports and financial records converted to English and/or dollars? If so, how is this accomplished? If not, indicate whether someone in your organization is fluent in the foreign grant recipient's language, and what their position is.

Response received 2/10/XX: N/A

3. Are there specific individuals within the foreign grant recipient organization for whom to contact regarding the use of the grant funds? If so, please provide the contact information for each foreign grant recipient organization, and indicate the position held by the contact person.

Response received 2/10/XX: If contact is needed, then the foreign organization's office is called. There is no specific contact person.

4. Does your organization periodically evaluate reports and financial statements for comparison purposes with the original grant proposal/application? If so, how often does this take place, and who is responsible for such evaluation and review? If applicable, please have these reports available upon request.

Response received 2/10/XX: N/A

5. Are on-site field audits of the foreign grant recipients performed by your organization? If so, please provide a detailed explanation of these on-site audits, including how often they are performed and what reports are prepared. If applicable, please have these reports available upon request.

Response received 2/10/XX: Periodic visits are made to the foreign grant organizations.

Note: No written documentation of the visits was provided during the examination.

6. If your organization determines that funds granted to a foreign grant recipient are not accounted for, what steps are taken to track the funds, and if necessary, recover unaccounted or misspent funds? If applicable, please provide documentation of actual instances where this has occurred.

Response received 2/10/XX: N/A

7. If your organization determines that the foreign grant recipient organization has failed to satisfy accountability requirements, is funding discontinued? If so, how does your organization notify the foreign grant recipient?

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Name of Taxpayer ORG		Year/Period Ended April 30, 20XX-20XX

Response received 2/10/XX: N/A

In contrast with the responses above that were provided in February 20XX, ORG made the following representations in June 20XX correspondence related to its Forms 1023 application:

"Our funding to XXXXXX provides for tuition subsidies for poor students, rental of study premises and dining facilities, and recreational activities...In addition, they request funding to provide fellowship grants to graduate students to continue their studies, do research, and intern as student teachers. The XXXXXX contacts us periodically in writing about ongoing financial needs, projects, and other budgetary situations. These written requests are considered at meetings of the board of directors and donations are allocated accordingly." (6/23/XX)

"We keep a file for all requests for contributions by organizations and individuals." (6/23/XX)

"Our Board will not approve any distributions to XXXXXX or any other recipient without receiving a grant request or letter. The Board carefully reviews the request and acts thereon accordingly." (6/23/XX)

Loans to and from related parties:

Undocumented loans to and from related parties were reported on Form 990 (listed as assets or liabilities on Form 990 but not reported on Schedule L as required.) :

Loans Receivable	Director-2	Individual-3
990 20XX04	NA	NA
990 20XX04	\$0	\$0

Loans Payable	"A"	"B"	"ORG"	"BG"
990 20XX04	\$0	\$0	NA	NA
990 20XX04	\$0	\$0	\$0	\$0

In a letter dated June 29, 20XX, ORG states that Loan Receivable – Director-2 was actually repayment of a loan Director-2 had made to the organization earlier in the same fiscal year.

Regarding "Loan B", the EO states that it borrowed \$X from board member Director-1 in March 20XX, which it repaid in May 20XX. The EO states that it borrowed \$ from Individual-4, who is a relative of a board member. This loan was not repaid. In September 20XX, the EO borrowed \$X from ORG. This amount is still reported as outstanding on the Form 990 for the year ended April 30, 20XX.

None of the loans to or from the EO are documented in writing. The EO states that there was no interest charged, as it is against Jewish religious teachings.

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Unreported payments to individuals:

ORG's general ledger for the two year period ending April 30, 20XX shows a total of \$X in payments to individuals which were not reported on Form W-2 or Form 1099-MISC. Payments include wages; "stipends" to instructors, tutors, or students; "rent" payments to an officer/employee; and "loan" proceeds or repayments for which no contemporaneous loan documentation exists. Note: The month of April 20XX is not included here because it is only one month of the quarterly employment tax period ending June 30, 20XX.

<u>Qtr covered by</u> <u>990 exam</u> <u>(20XX and</u> <u>20XX)</u>	<u>Payments</u> <u>to</u> <u>Individual</u> <u>s</u>	<u>Ledger Account</u>	<u>F941</u> <u>Total</u> <u>Comp</u>	<u>F941</u> <u>Fed.</u> <u>Income</u> <u>Tax WH</u>	<u>F941</u> <u>Total</u> <u>SS/Med</u> <u>Wages</u>	<u>Unreporte</u> <u>d pmts to</u> <u>individuals</u>
total for qtr						
20XX06 (May	\$0	NA	\$0	\$0	\$0	\$0
and June)						
total for qtr						
20XX	\$0	NA	\$0	\$0	\$0	\$0
20XX	\$0	Transfers to ORG (stipends)				
total for qtr						
20XX	\$0		\$0	\$0	\$0	\$0
20XX	\$0	Transfers to ORG (stipends)				
20XX	\$0	Transfers to ORG (wages-fellowship)				
total for qtr						
20XX	\$0		\$0	\$0	\$0	\$0
20XX	\$0	Transfers to ORG (stipends)				
20XX	\$0	Stipends				
total for qtr						
20XX	\$0		\$0	\$0	\$0	\$0
20XX	\$0	Loans Receivable (undocumented)				
		Rent (paid to				
20XX	\$0	officer/employee)				
20XX	\$0	Stipends				
20XX	\$0	Wages, transferred to Stipends				
total for qtr						
20XX	\$0		\$0	\$0	\$0	\$0
20XX	\$0	Loans Receivable (undocumented)				
		Rent (paid to				
20XX	\$0	officer/employee)				
20XX	\$0	Stipends				
20XX	\$0	Wages, transferred to Stipends				
total for qtr						
20XXXX	\$0		\$0	\$0	\$0	\$0
20XX03	\$0	Loans Receivable (undocumented)				
20XX	\$0	Stipend				
20XX	\$0	Wages				

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total for qtr					
20XX	\$0	\$0	\$0	\$0	\$0
(April 20XX not incl. here)					\$0

It was in the fall of 20XX that the articles of incorporation were amended to include an expanded purpose that includes "to provide student, holiday and fellowship stipends; to support Jewish education; to fund Jewish outreach, events, weekends, and trips; and to fund room and board for students attending Jewish institutions."

On the Form 990 for the period ended April 30, 20XX, the EO reported "stipends" as contributions to ORG. For the calendar year ended December 31, 20XX, wages expense was reported as "stipends." The organization first started filing employment tax forms in the calendar year ended December 31, 20XX.

In addition to direct payments to individuals, the general ledger memo for contributions to Torah-2 made in the period ended 4/30/XX indicates "student fellowships." Torah-2 made no grant application. Neither did it report on the use of the grants received. Torah-2 received \$0 from ORG in the period ended 4/30/XX

Tuition payments:

The following accounting transactions were questioned on Information Document Request #4 dated XX/14/20XX:

- According to the general ledger for the year ended April 30, 20XX, checks or transfers in the amount of \$0 were made to ORG. However, only \$0 was reported on Form 990 as contributions to the ORG. Explain the difference in the general ledger and the Form 990.
- According to the general ledger for the year ended April 30, 20XX, a liability account entitled "Due to Jewish Education" was used instead of the usual "Contributions" account for \$0 in deposits. Explain the use of a liability account in addition to the revenue account for contributions received.
- According to the general ledger for the year ended April 30, 20XX, the "Due to Jewish Education" account was zeroed out with year end journal entries with credits of \$0 to "Accounts Receivable and \$0 to "Transfers to ORG." Explain the reason for the journal entries and the relationship between the accounts.

In a written response received 2/10/XX, the EO provided the following explanation to the three items noted above,

"As we understand it, the correction was made because a portion of the funds recorded as contributions was actually a short term loan."

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In a later written response dated June 29, 20XX, the EO provided this explanation for the transactions:

"Jewish Education [] has had a history of tuition checks being lost in the mail when they are sent to it from the United States to Country. Purely as an accommodation to the parents located in the United States who were remitting tuition to Jewish Education, Jewish Education asked ORG if they would be willing to accommodate those payers of tuition by permitting them to deposit the funds to ORG which would then transfer to Jewish Education. Being that these were tuitions to Jewish Education and not donations to ORG, no tax-deductible receipts were issued. The fact that, after ORG received tuition funds under this arrangement, ORG was indebted in a like amount until the funds were transferred is why it was listed under Liabilities instead of Contributions."

In correspondence of 6/23/XX related to the Forms 1023 application, ORG stated:

"When we receive a donation for the school, we make it clear to the donor that we are prohibited by law to accept donations that are really tuition or in any other way a payment for services rendered."

A review of the student list from the Form 1023 application correspondence shows the following overlap with the EO's Schedule B:

Donor Name on Schedule B 990 20XX, total of 6 donors listed (from Admin file)	Donation to ORG	Student Last Name (from Admin file)	School year 20' 20XX	School year 20XX- 2005	School year 20 20XX
Donor-1	\$0	Donor-1	x	x	x
Donor-2	\$0	Donor-2	x	x	
Donor-3	\$0	Donor-3		x	x
Donor-4	\$0				
Donor-5	\$0	Donor-5	x	x	
Donor-6	\$0	Donor-6	x	x	x

Examination of the EO's Schedule B (Schedule of Contributors) listing names of those persons or entities who contributed \$0 or more, compared with the list of student names at the ORG, shows the following overlap:

Donor Name on Schedule B 990 20XX04	Donation to ORG	Student Last Name	Tuition Fee 20XX-20XX	Scholarship Received 20XX-20XX	Total Tuition Cost
		Stu-1	\$0	\$0	\$0
Donor-7	\$0	Donor-7	\$0	\$0	\$0
		Stu-2	\$0		\$0
		Stu-3	\$0	\$0	\$0
		Stu-4	\$0	\$0	\$0

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Donor-8	\$0		\$0	\$0	NA
		Donor-8	\$0	\$0	\$0
		Donor-8	\$0	\$0	\$0
		Donor-8	\$0	\$0	\$0
Donor-9	\$0	Donor-9	\$0	\$0	\$0
		Stu-5	\$0	\$0	\$0
		Stu-6	\$0	\$0	\$0
Donor-10	\$0	Donor-10	\$0	\$0	\$0
Donor-11	\$0	Donor-11	\$0	\$0	\$0
Donor-12	\$0	Donor-12	\$0	\$0	\$0
Donor-13	\$0	Donor-13	\$0	\$0	\$0
		Stu-7	\$0	\$0	\$0
Donor-14	\$0	Donor-14	\$0	\$0	\$0
Donor-15	\$0	Donor-15	\$0	\$0	\$0
		Stu-8	\$0	\$0	\$0
		Stu-9	\$0	\$0	\$0
		Stu-10	\$0	\$0	\$0
XXXX	\$0			NA	
			\$0	\$0	\$0

Donor Name on Schedule B 990 20XX04	Donation to ORG	Student Last Name	Tuition Fee 20XX- 20XX	Scholarship Received 20XX- 20XX	Total Tuition Cost
		Stu-11	\$0	\$0	\$0
		Stu-12	\$0	\$0	\$0
		Stu-13	\$0	\$0	\$0
		Stu-14	\$0	\$0	\$0
Donor-18	\$0		\$0	\$0	\$0
		Stu-15	\$0	\$0	\$0
		Stu-16	\$0	\$0	\$0
Donor-19	\$0				
Donor-20	\$0	Donor-20	\$0	\$0	\$0
		Stu-17	\$0	\$0	\$0
		Stu-18	\$0	\$0	\$0
		Stu-19	\$0	\$0	\$0
Donor-21	\$0	Donor-21	\$0		\$0
		Stu-20	\$0	\$0	\$0
		Stu-21	\$0		\$0
Donor-9	\$0	Donor-9	\$0	\$0	\$0
		Stu-5	\$0	\$0	\$0
		Stu-23	\$0	\$0	\$0

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Donor-23	\$0	Donor-23	\$0	\$0	\$0
Donor-24	\$0				
		Stu-24	\$0		\$0
Donor-11	\$0	Donor-11	\$0	\$0	\$0
Donor-26	\$0	Donor-26	\$0	\$0	\$0
Donor-27					
Donor-28	\$0	Donor-28	\$0	\$0	\$0
		Donor-12	\$0	\$0	\$0
		Stu-26	\$0	\$0	\$0
Donor-14	\$0	Donor-14	\$0	\$0	\$0
		Stu-27	\$0	\$0	\$0
Donor-15	\$0	Donor-15	\$0	\$0	\$0
		Stu-28	\$0	\$0	\$0
		Stu-29	\$0	\$0	\$0
		Stu-30	\$0	\$0	\$0
		Stu-31	\$0	\$0	\$0
		Stu-32	\$0	\$0	\$0
			\$0	\$0	\$0

LAW:

Section 501(c)(3) of the Internal Revenue Code (Code) exempts from Federal income tax organizations that are organized and operated exclusively for religious, charitable, scientific, or educational purposes where no part of the net earnings inures to the benefit of any private shareholder or individual.

Reg. 1.501(c)(3)-1(d)(1) states, in part, that an organization is not organized or operated exclusively for one or more exempt purposes "unless it serves a public rather than a private interest. Thus... it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests."

Reg. 1.501(c)(3)-1(c)(1) states, in part, that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 501 (c)(3) of the Code exempts from federal income tax organizations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501 (c)(3)-1 (a)(1) of the regulations provides that in order to be exempt as an organization described in section 501 (c)(3) of the Code, the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

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Section 1.501 (c)(3)-1 (c)(1) of the regulations provides that an organization will not be regarded as operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501 (c)(3)-1 (d)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501 (c)(3)-1 (d)(2) of the regulations provides that the term "charitable" is used in section 501 (c)(3) of the Code in its generally accepted legal sense, and includes the promotion of education.

The presence of a single substantial nonexempt purpose can destroy the exemption regardless of the number or importance of exempt purposes. Better Bus. Bureau v. United States, 326 U.S. 279, 283, 90 L. Ed. 67, 66 S. Ct. 112 (1945); Am. Campaign Acad. v. Commissioner, 92 T.C. 1053, 1065 (1989); see also Old Dominion Box Co., Inc. v. United States, 477 F.2d. 340 (4th Cir. 1973), cert. denied, 413 US 910 (1973)("operating for the benefit of private parties who are not members of a charitable class constitutes a substantial nonexempt purpose"). When an organization operates for the benefit of private interests, such as designated individuals, the creator or his family, or persons directly or indirectly controlled by such private interests, the organization by definition does not operate exclusively for exempt purposes. Am Campaign Acad. v. Commissioner, supra at 1065-1066.

In Christian Stewardship Assistance vs. Commissioner, 70 T.C. 1037, (1978) an organization was formed as a nonprofit corporation to support and assist religious, educational and/or other nonprofit organizations in their relationships with their contributors and in stimulating proper application of Christian stewardship principles among their contributors. To reimburse its cost of operation, petitioners charge a fee to each subscribing organization.

Respondent determined that the described activities, although helpful to charitable organizations are not exclusively for charitable purposes, but rather serve private interest by advising individuals about methods to decrease Federal income and estate taxes.

In Rev. Rul. 69-545, 1969-2 CB117, a hospital did not qualify under section 501(c)(3) of the Code because it must be organized and operated exclusively for one or more of the purposes set forth in that section. Hospital B was initially established as a proprietary institution (same as network marketing) for the benefit of its owners. Although its ownership had been transferred to a nonprofit organization, the hospital continued to be operated for the private benefit of the original owners who exercised control over the EO through the board of trustees. They had used their control to restrict staff (determine amount contributions), to enter into favorable rental agreements (who deducts what expenses), and to limit emergency room care and hospital admission to their own patients. These facts indicated that the hospital was operated for the private benefit of its original owners, rather than for the exclusive benefit of the public.

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In Living Faith, Inc v. Commissioner, 950 F.2d 365, a nonprofit organization operated restaurants and food stores in accordance with doctrines of the Seventh-day Adventist Church. Their application was denied because it was not operated exclusively for exempt purposes. Living Faith operated two vegetarian restaurants and health food stores in Illinois. These two facilities-the subject of this litigation-were open to the public. They had several purposes listed to (1) teach restaurant management, (2) teach vegetarian cooking, (3) minister to those...changing their way of life....,(4) learn how to communicate with others. In addition to purveying food and health products, Living Faith disseminated various informational materials which promoted both the healing and message of Jesus Christ and....Each day before the facilities opened, living Faith conducted devotional talks , Bible reading , Bible Studies..... It occasionally provided meals to the needy..... The nonexempt purpose cannot be substantial. A single activity may be carried on for more than one purpose. The fact that an organization's primary activity may constitute a trade or business does not, of itself, disqualify it from classification under 501(c)(3), provided the trade or business furthers or accomplishes an exempt purpose. If one of the activities purposes, however, is substantial and nonexempt, the organization will be denied exempt status under 501 (c)(3), even if its activity also furthers an exempt purpose.

Rev. Rul. 72-369, 1972-3 C.B. 245, describes an organization formed to provide management and consulting services at cost to unrelated exempt organizations. This revenue ruling states: Providing managerial and consulting services on a regular basis for as fee is a trade or business ordinarily carried on for profit..The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501 (c)(3) of the Code.

Also in B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978) the court concluded that because its sole activity consisted of offering consulting services for a fee, set at or close to cost, to nonprofit, limited resource organizations, it did not qualify for exemption under section 501 (c)(3) of the Code.

IRC 170(c)(2)(A) provides that a charitable contribution to be deductible must be made to an organization "created or organized in the United States or in any possession thereof, or under the law of the United States, any state, the District of Columbia, or any possession of the United States."

In S. E. Thomason v. Commissioner, 2 T.C. 441 (1943), the court held that amounts paid to provide special advantages for a particular child in the Illinois Children's Home and Aid Society were not deductible when earmarked for the benefit of that child. This case, and Rev. Rul. 54-580, 1954-2 C.B. 97, established the principle that "an inquiry as to the deductibility of a contribution need not stop once it is determined that an amount has been paid to a qualifying organization; if the amount is earmarked, then it is appropriate to look beyond the fact that the immediate recipient is a qualifying organization to determine whether the payment constitutes a deductible contribution." (Rev. Rul. 63-252.)

Rev. Rul. 63-252 applied these principles to the question of deductibility of contributions to foreign organizations and concluded:

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"A given result at the end of a straight path is not made a different result because reached by following a devious path." Minnesota Tea Co. v. Helvering, 302 U.S. 609, at 613, Ct. D. 1305, C.B. 1938-1, 288; George W. Griffiths v. Helvering, 308 U.S. 355, at 358, Ct. D. 1431, C.B. 1940-1, 136. Moreover, it seems clear that the requirements of section 170(c)(2)(A) of the Code would be nullified if contributions inevitably committed to go to a foreign organization were held to be deductible solely because, in the course of transmittal to the foreign organization, they came to rest momentarily in a qualifying domestic organization. In such case the domestic organization is only nominally the donee; the real donee is the ultimate foreign recipient."

Rev. Rul. 63-252 illustrated the point with the following five examples:

(1) In pursuance of a plan to solicit funds in this country, a foreign organization caused a domestic organization to be formed. At the time of formation, it was proposed that the domestic organization would conduct a fund-raising campaign, pay the administrative expenses from the collected fund and remit any balance to the foreign organization.

(2) Certain persons in this country, desirous of furthering a foreign organization's work, formed a charitable organization within the United States. The charter of the domestic organization provides that it will receive contributions and send them, at convenient intervals, to the foreign organization.

(3) A foreign organization entered into an agreement with a domestic organization which provides that the domestic organization will conduct a fund-raising campaign on behalf of the foreign organization. The domestic organization has previously received a ruling that contributions to it are deductible under section 170 of the Code. In conducting the campaign, the domestic organization represents to prospective contributors that the raised funds will go to the foreign organization.

(4) A domestic organization conducts a variety of charitable activities in a foreign country. Where its purposes can be furthered by granting funds to charitable groups organized in the foreign country, the domestic organization makes such grants for purposes which it has reviewed and approved. The grants are paid from its general funds and although the organization solicits from the public, no special fund is raised by a solicitation on behalf of particular foreign organizations.

(5) A domestic organization, which does charitable work in a foreign country, formed a subsidiary in that country to facilitate its operations there. The foreign organization was formed for purposes of administrative convenience and the domestic organization controls every facet of its operations. In the past the domestic organization solicited contributions for the specific purpose of carrying out its charitable activities in the foreign country and it will continue to do so in the future. However, following the formation of the foreign subsidiary, the domestic organization will transmit funds it receives for its foreign charitable activities directly to that organization.

Rev. Rul. 63-252 held that contributions to organizations described in the first, second, and third examples were not deductible but that contributions to the organizations described in examples four and five were. In examples four and five the contributions were not earmarked for use in a foreign country and the contributions were subject to control by the domestic organization.

Rev. Rul. 66-79, clarified an ambiguity contained in examples three and four of Rev. Rul. 63-252. Rev. Rul. 66-79 provided that contributions to a domestic charity solicited for a specific project of a

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foreign charity are deductible under IRC 170 where the domestic organization has approved the project as being in furtherance of its own exempt purposes and has control and discretion as to the use of the contributions. In this case the bylaws of the domestic organization provided among other things that the Board of Directors would require that grantees furnish a periodic accounting to show that the funds were expended for purposes for which they were approved and the Board might, in its absolute discretion, refuse to make grants for which any funds were requested. The revenue ruling concluded that "the test in each case is whether the organization has full control of the donated funds, and discretion as to their use, so as to insure that they will be used to carry out [the domestic organization's] function and purposes."

Rev. Rul. 83-104, 1983-2 C.B. 46, states, in part, that a contribution for purposes of section 170 of the Code is a voluntary transfer of money or property that is made with no expectation of procuring a financial benefit commensurate with the amount of the transfer. (See section 1.170A-1(c)(5) of the Income Tax Regulations and H.R. Rep. No. 1337, 83rd Cong., 2d Sess. A44 (1954).) Tuition expenditures by a taxpayer to an educational institution are therefore not deductible as charitable contributions to the institution because they are required payments for which the taxpayer receives benefits presumably equal in value to the amount paid.

TAXPAYER'S POSITION:

On February 25, 20XX, a closing conference/manager meeting was held between the taxpayer's representative, the EO group manager, and the EO examiner to discuss the outcome of the examination and the draft report proposing revocation. A letter was sent to the taxpayer and faxed to the representative the same day requesting a written response to the draft proposal within fourteen days. In a letter dated March 11, 20XX, the taxpayer's representative requested an extension of time until April 15, 20XX to provide a written response. The letter received March 12, 20XX also included the following statements:

- The reason the EO's contributions to ORG were not included in the school's Form 990 for 20XX is that the school reported only funds deposited into U.S. accounts on Form 990. (The EO's contributions to the ORG were not deposited into the U.S. account.)
- Donor receipts are only issued for contributions of \$0 or greater (unless requested) and not issued when the donor has the same surname as a student.

In a document received May 3, the taxpayer states:

- The necessary records are not available due to the 20XX departure of both CFO Treasurer and officer administrator CFO.
- Payments to tutors and to schools are made on behalf of students; the EO does not provide any direct assistance to individuals.
- The EO is not controlled by another other organization.
- The EO incurs travel expenses for fundraising purposes.
- The EO does not engage in political activity.

None of the information provided by the taxpayer adequately addresses the main issues of private benefit or conduit activity. As of May 16, 20XX, no additional information provided by the taxpayer alters the government's position.

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GOVERNMENT'S POSITION:

ORG has at least two substantial nonexempt activities:

1. The organization collects tuition payments for the foreign schools it supports, deposits monies into its accounts, and transfers these payments to the schools along with regular contributions. For the year ended April 30, 20XX, tuition payments transferred total \$0; contributions to the school total \$0. The organization's Schedule B donors include the names of families who pay tuition to the foreign schools. This activity provides an improper private benefit to the parents of individual students. It is also an activity of a foreign conduit.

2. The organization makes payments to individuals which it categorizes as "stipends" for activities such as instructing and tutoring that which are not reported as wages. These payments are reportable as compensation, for which a separate employment tax adjustment will be proposed.

The payments are significant in relation to contributions to ORG. For the tax year ended April 30, 20XX, ORG's general ledger shows Transfers to ORG of \$0. 'Stipends' of \$0 paid to individuals were included in this amount.

For the tax year ended April 30, 20XX, ORG's reports contributions of \$0 made to ORG. In the same period, where wages totaled \$0 'stipends' totaled \$0, overshadowing the grants to the ORG.

ORG is acting as a conduit because it fails to exercise any discretion and control of funds it gives to schools or to individuals. Neither does it account for the donated funds to show they were spent for an exempt purpose. The organization's responses to information document requests shows that:

- They do not have a written grant application of their own.
- They do not request a detailed description of the grantee's educational activities or goals.
- They do not approve grants in amounts that vary from the amount requested.
- They do not require that recipients certify that funds will be used only for educational purposes.
- They do not have an agreement in place to measure progress toward goals.
- They do not have an agreement in place to withdraw approval if educational purposes are not being met.
- They do not require periodic reports to track the use of grant funds.
- They do not require grant recipients to provide written reports accounting for use of funds.
- They do not have a system in place to investigate when funds are not accounted for, seek to recover misspent funds, or discontinue funding when recipient fails to satisfy accountability requirements.

The EO cannot show how the schools or the individuals used the money. They cannot provide any financial records or an annual report for the schools they gave money to. Neither can they show attendance or grade reports for the students to which they awarded scholarships.

Scholarships awarded to the students cannot be tracked by individual, because payments were not made directly to the students. Instead, payments were made to tutors on behalf of the

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students. So not only can the EO not document the application process, it cannot show how the funds awarded to each student were ultimately used.

ORG has not filed a Form 990 since 20XX. The year ended December 31, 20XX, the ORG reported revenue of \$0 and expenses of \$0. Yet, ORG reports giving them \$0 for the year ended April 30, 20XX and \$0 for the year ended April 30, 20XX. And the ORG reportedly has approximately 20-30 students, with reported tuition costs of \$0 per student. So examination of ORG's Form 990 yields more questions than answers.

Conclusion:

ORG has failed to demonstrate that it is operated exclusively for charitable purposes. It provides a private benefit, and cannot document that funds it contributes to educational organizations or to individuals were used for exempt purposes. Therefore, it is not an organization described under IRC 501(c)(3) and its tax exempt status is revoked effective May 1, 20XX. This organization is required to file forms 1120 for all tax periods beginning after April 30, 20XX.

If this conclusion is not supported, contributions to the organization which is acting as a conduit for a foreign organization should not be deductible under IRC 170 (c)(2.)